

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN re LATEX GLOVE PRODUCTS LIABILITY
LITIGATION,

DEBORAH LEE-HILLMAN, et al.,

Plaintiff(s),

v.

ALLEGIANCE CORPORATION, et al.,

Defendant(s).

NO. C00-556P

ORDER ON MOTION FOR LEAVE
TO FILE AMENDED CROSS-CLAIM/
THIRD-PARTY COMPLAINT

SHERWOOD MEDICAL COMPANY,

Counter-claimants,

v.

ANSELL HEALTHCARE PRODUCTS, INC., et
al.,

Counter-defendants.

The above-entitled Court, having received and reviewed:

1. Sherwood Medical Company's Motion for Leave to File an Amended Cross Claim/Third Party Complaint
2. Opposition of Aladan Corporation, SSL U.S. Manufacturing, LLC, f/k/a London International Group, LLC, and SSL Americas Inc., f/k/a London International Group, Inc. to Sherwood Medical Company's Motion for Leave to File an Amended Cross Claim/Third Party Complaint
3. Sherwood Medical Company's Reply in Further Support of Motion for Leave to File an Amended Cross Claim/Third Party Complaint

ORD ON MTN
TO AMEND - 1

1 and all exhibits and declarations attached thereto, makes the following ruling:

2 IT IS HEREBY ORDERED that the motion is DENIED.

3 IT IS FURTHER ORDERED that this Court declines to further exercise supplemental
4 jurisdiction over this matter and the case is DISMISSED without prejudice to re-filing it in an
5 appropriate forum.

6 **Background**

7 Cross-claimant Sherwood Medical Company's claims against Ansell Healthcare Products, Inc.,
8 Ansell Malaysia SDN BHD, Ansell Perry, Inc. and Ansell, Inc. ("the Ansell parties") were the only
9 claims remaining following the settlement between and dismissal of the Plaintiffs and all Defendants
10 from this matter. The allegations involve claims of indemnification stemming from latex glove
11 purchases over the period originally covered by Plaintiff's complaint. A Joint Status Report was filed
12 (Dkt. No. 60) and an Order Setting Trial Date and Related Dates entered (Dkt. No. 61).

13 Sherwood has now filed a request for leave to add additional cross-claimants and third-party
14 defendants: namely, Aladan Corporation ("Aladan"); LIG, LLC; LIG, Inc.; Regent Medical Division
15 of SSL Americas ("Regent Medical"); SSL U.S. Manufacturing, LLC ("SSL U.S. Mfg."); and SSL
16 Americas, Inc. ("SSL Americas") – collectively, the "Regent/LIG/SSL entities." The motion seeks to
17 add LIG, LLC and LIG, Inc. as cross-claimants on the grounds that they were previously parties to the
18 original litigation; the remainder of the parties are sought to be added as third-party defendants.

19 None of the parties are domiciled in this forum. There is not diversity among the parties. The
20 Ansell third-party Defendants have indicated that they have no objection to dismissal from this court
21 for purposes of re-filing in a more appropriate forum. At oral argument on the Motion to Amend, the
22 Court heard argument from all parties on the issue of the continuing exercise of supplemental
23 jurisdiction.

24 **Discussion**

1 As regards the proposed amended cross-claims, FRCP 13(g) only permits the filing of such
2 claims against “co-parties.” Courts have consistently held that “[a] cross-claim cannot be asserted
3 against a party who was dismissed from the action previous to the assertion of the cross-claim.” Wake
4 v. United States, 89 F.3d 53, 63 (2nd Cir. 1996), quoting Glazier & Glassworkers Union v. Newbridge
5 Securities, 823 F.Supp. 1188, 1190 (E.D. Pa. 1993). Therefore the Court will not in any event
6 entertain a motion to add the LIG entities as cross-claimants.

7 The Court finds that the issue of whether to permit Third-Party Plaintiff Sherwood to amend
8 their complaint to add further third-parties defendant is completely subsumed by the larger issue of
9 whether to continue to litigate this case in this forum at all. All parties concede that, with the dismissal
10 of the underlying litigation, there is no further basis for original federal jurisdiction over the remaining
11 claims. The Court must continue to exercise authority over this matter, if at all, by means of
12 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3).

13 The exercise of supplemental jurisdiction is “a doctrine of discretion, not of plaintiff’s right.”
14 Blake v. Pallan, 554 F.2d 947, 958 (9th Cir. 1977). Federal courts “have indicated a strong preference
15 for the dismissal of pendent or ancillary claims whenever the district court disposes of the federal
16 claims prior to trial.” United States v. Zima, 766 F.2d 1153, 1158 (7th Cir. 1985); *accord* United Mine
17 Workers v. Gibbs, 383 U.S. 715, 726 (1966). Justification for the exercise of supplemental
18 jurisdiction “lies in considerations of judicial economy, fairness and convenience to the litigants; if
19 these are not present a federal court should hesitate to exercise jurisdiction over state claims.” Gibbs,
20 id.

21 Having delayed over 5 years from the instigation of this litigation to bring the claims it now
22 seeks to add, the factor of fairness does not operate in Sherwood’s favor. None of the remaining
23 parties are domiciled in this forum and the Court takes judicial notice of the fact that all the law firms
24 of the lead counsel for the parties are in some other part of the country. Convenience, therefore, does
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1 not dictate that the matter remain here. Sherwood has argued that it must depose the original plaintiff
2 (who resides in Washington) at some point, but this fact alone does not outweigh the large quantity of
3 out-of-state depositions which will have to be taken from insurance company personnel and parties to
4 the contracts at issue.

5 Considerations of judicial economy mitigate in favor of declining to further exercise
6 supplemental jurisdiction. As Sherwood has pointed out, there are numerous other lawsuits
7 concerning these parties and these issues already underway in other areas of the country; surely it
8 makes economic sense (for both the courts and the parties) to join this litigation to one of those
9 pending actions. Nor would it make any sense to retain the Ansell parties (who are already before this
10 Court as the subjects of Sherwood's third-party complaint) if the remainder of the parties are to be
11 sent elsewhere; in any event, the Ansell defendants have indicated their willingness to be dismissed out
12 of this litigation. Finally, the Court notes that the parties are in agreement that New York law governs
13 the contracts at issue in Sherwood's claims, and Sherwood has offered no compelling argument as to
14 why a Washington federal court is best suited to interpret and apply New York state law.

15 Sherwood attempts to make much of the fact that they have been permitted to proceed to this
16 point under the supplemental jurisdiction banner, arguing that the Court "has implicitly acknowledged
17 that the exercise of supplemental jurisdiction in this matter is appropriate." Reply, p. 8. The fact that
18 this litigation has not been subjected to the jurisdiction analysis conducted supra does not prevent the
19 Court from doing so now. A court may decline supplemental jurisdiction at any stage of the litigation
20 and the fact that it may have previously exercised such jurisdiction is not a bar to later relinquishing it.
21 Innovative Home Health Care, Inc. v. P.T. - O.T. Assocs of the Black Hills, 141 F.3d 1284, 1287 (8th
22 Cir. 1994).

23 **Conclusion**

1 Third-party Plaintiff Sherwood will not be permitted to allege cross-claims against parties
2 previously dismissed from this litigation. Additionally, considerations of judicial economy, fairness,
3 convenience to the litigants and principles of comity with the state courts dictate that this Court
4 decline any further exercise of supplemental jurisdiction over the parties to this lawsuit. Accordingly,
5 the matter will be dismissed without prejudice to third-party plaintiffs to join these claims to some
6 pending action elsewhere or re-file them in a more appropriate forum.

7
8 The clerk is directed to provide copies of this order to all counsel of record.

9 Dated: June __3__, 2005



Marsha J. Pechman
U.S. District Judge